

REMARKS

Claims 1, 3, 5 – 7, 20 – 23, 26 and 27 are pending in the present application.

Applicants submit the following remarks in conjunction with the enclosed Request for Continued Examination in an attempt to avoid incurring further extension of time fees in the present application, even though no further arguments should be necessary to establish the patentability of the present claims over the references of record. Applicants respectfully request an interview with the Examiner before the first Action on the merits, to further discuss the remarks presented below, and any additional evidence that may be needed to establish the patentability of the present claims.

Claims 1 and 5 have been rejected under 35 U.S.C. §103(a) as being unpatentable over United States Patent No. 3,690,321, to Hirschman, hereinafter "Hirschman," in view of United States Patent No. 3,830,237, to Bernardin et al., hereinafter "Bernardin." Applicants respectfully traverse this rejection. Claim 1 is independent.

Claim 1 is directed to a fibrous tampon for absorbing body fluids. The tampon comprises, *inter alia*, at least one inner layer having one or more malodor counteractant materials incorporated therein, and at least one outer layer that provides a cross-pad configuration to the fibrous tampon. The one or more malodor counteractant materials is present between about 0.01 grams to about 0.12 grams.

Applicants respectfully submit that the proposed combination of cited art fails to disclose or suggest the claimed inner layer, outer layer, cross-pad configuration, or the claimed range of malodor counteractant materials.

Hirschman is directed to a catamenial device including a tampon for insertion into the vaginal canal. (Abstract) The device includes a tampon portion 11, and a pad portion 12 that extends transversely to an axis of the tampon portion 11. The tampon portion 11 has grooves 14 cut into an end 13 thereof, so that the grooves 14 may carry fluids such as a deodorant. (col. 2, l. 22-39)

Bernardin is directed to a method for incorporating "small but effective" amounts of an odor-counteracting scent into a tampon. The scent is disposed in a pre-formed axial cavity in the base of the tampon. (Abstract)

Neither Hirschman, nor Bernardin, nor the combination of the two, discloses or suggests the fibrous tampon of claim 1. The Advisory Action states that grooves 14 can form the inner layer of claim 1, and that tampon portion 11 or pad portion 12 can form the outer layer. The Advisory Action further states that these features read on the claimed inner layer, and outer layer that provides a cross-pad configuration to the fibrous tampon.

Even under the broadest reasonable interpretation rule, the claims must be interpreted in a manner that is "consistent with the specification." MPEP §2111 (emphasis added). The MPEP further adopts the express holding of the United States Court of Appeals for the Federal Circuit that the claims must be interpreted not solely on the claim language itself, but "how it would be interpreted in light of the specification as it would be interpreted by one of ordinary skill in the art." *Id.* (citing *Phillips v. AWH Corp.*, 415 F.3d 1303, 1316 (Fed. Cir. 2005)(citing *In re Am. Acad. of Sci. Tech. Ctr.*, 367 F.3d 1359, 1364 (Fed. Cir. 2004)).

Here, there is no support whatsoever, either in the present specification or the references of record, for the Advisory Action's interpretation of the present claims. The specification expressly defines, and illustrates, what is meant by a cross-pad configuration. (p. 7, l. 19-21, Fig. 1) The intersecting layers 14 and

16, which are arranged in a cross shape, are then formed into the claimed tampon. (p. 22, l. 20-22) Hirschman, by contrast, does not at all disclose layers that are arranged into a cross-pad configuration. The phrase "cross pad" is completely absent from Hirschman. Furthermore, one of ordinary skill in the art would understand that the term "cross-pad" configuration does not apply to the type of device shown in Hirschman, but rather to that of Fig. 1 of the present application. This term is an established term of art in the tampon industry, and also has a similar meaning in other fields of art, such as for abrasive pads. (See, U.S. Patent Application Publication No. 2008/0287902, at ¶23, and <http://worldwideabrasives.com>). When given a reading consistent with the present specification, and how the term "cross-pad" is understood by one skilled in the art, there is no reasonable interpretation of claim 1 or Hirschman that would support the Advisory Action's rejection.

In addition, Applicants fail to see how the Advisory Action's assertion that "claim 1 does not require that the layers are separate layers" is relevant. Further clarification is required. Claim 1 recites an inner layer and an outer layer separately, and they are each distinct elements of the claim. The device of Hirschman does not disclose or suggest layers at all, but rather a "cellulose wadding" that is rolled or molded into the desired configuration. (col. 2, l. 26-29) This is further support of the patentability of claim 1.

Furthermore, the Advisory Action acknowledges that Bernardin fails to disclose the amount of malodor counteractant recited in claim 1. The Advisory Action further states, however, that "Bernardin teaches a sufficient amount of malodor counteractant to be effective," and that this disclosure reads on the amount of malodor counteractant recited in the present claims. In response, Applicants respectfully submit that Figs. 2-3 of the present application establish the criticality of the claimed amount over what is recited in Bernardin. The amount of counteractant disclosed in Bernardin is 0.006 grams (g), or 6 milligrams (mg). As discussed in the present application, 70% percent of the

synthetic malodor applied to the tampons of the present application was absorbed at amounts of malodor counteractant as low as 0.010 g. (p. 18, l. 24 – p. 19, l. 2) As shown in Figs. 2-3, once the amount of malodor counteractant drops below this value, the effectiveness at malodor absorption drops off significantly. Bernardin, in fact, states that 6 mg is the maximum amount of malodor counteractant that can be placed in the tampon, and that a more preferred range is 2-4 mg. (col. 3, l. 10-12) If this amount were substituted into the tampon of the present claims, the effectiveness at malodor absorption would be even worse. Thus, the amount of malodor counteractant of claim 1 is patentably distinguishable over that disclosed in Bernardin.

Claim 1 is therefore patentable under 35 U.S.C. §103(a) over Hirschman in view of Bernardin. Claim 5 depends from claim 1, and is also patentable over this combination for at least the reasons provided above in support of the patentability of claim 1. Applicants respectfully submit that the rejection of claims 1 and 5 under 35 U.S.C. §103(a) as being unpatentable over Hirschman in view of Bernardin has been overcome, and request that it be withdrawn.

Claims 3, 6, 7, 20-23, 26, and 27 have been rejected under 35 U.S.C. §103(a) as being unpatentable over Hirschman in view of Bernardin, in further view of United States Patent No. 5,417,224, to Petrus et al., hereinafter "Petrus." Applicants respectfully traverse this rejection. Claims 6, 20, 26, and 27 are independent.

Petrus is directed to a tampon having one or more loops placed entirely through the tampon for ease of insertion and removal. (Abstract) The tampon 10 comprises a spherical member 12 having a "polymeric sponge-like structure." (col. 5, l. 20-23) In one embodiment, the tampon can have a lubricant such as glycerin. (col. 6, l. 41)

Claim 3 depends from claim 1, and further recites that the one or more malodor counteractant materials is glycerin.

Independent claim 6 is directed to a fibrous tampon for absorbing body fluids. The tampon comprises at least one inner layer having liquid glycerin incorporated therein, and at least one outer layer that provides a cross-pad configuration to the fibrous tampon. The liquid glycerin is present between about 0.01 grams to about 0.05 grams.

Independent claim 20 recites a fibrous tampon for absorbing body fluids. The fibrous tampon comprises a fibrous article having at least one inner layer and at least one outer layer suitable for absorbing the body fluids. The fibrous tampon further comprises a liquid glycerin that does not support microbial growth, disposed continuously along a longitudinal extant of the at least one inner layer, to absorb odors associated with the body fluids. Claim 20 also requires that liquid glycerin be present between about 0.01 grams to about 0.12 grams.

Independent claim 26 recites a method of deodorizing a vaginal area. The method comprises applying to the vaginal area a multi-layered fibrous absorbent article having a malodor counteractant material. The multi-layered fibrous absorbent article comprises, *inter alia*, an inner layer and an outer layer. Glycerin and at least one additional malodor counteractant material are incorporated within the multi-layered fibrous absorbent article between the inner and outer layer.

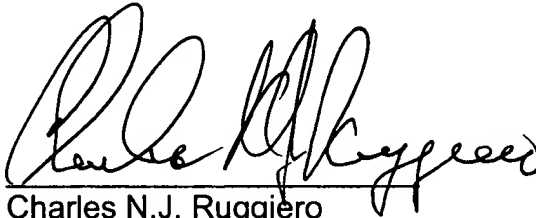
Independent claim 27 recites a method of deodorizing a vaginal area. The method comprises the step of applying a fibrous absorbent article to the vaginal area. The fibrous article comprises, *inter alia*, glycerin in an amount of about 0.01 grams to about 0.05 grams. The fibrous article further comprises at least one inner layer and at least one outer layer.

Applicants re-assert the arguments put forth in the last Response submitted on December 4, 2008, in support of the patentability of these claims. Petrus fails to disclose or suggest an inner layer and outer layer, or the amount of glycerin recited in the present claims. Petrus also fails to disclose or suggest the cross-pad configuration recited in claims 1 and 6, a liquid glycerin disposed continuously along a longitudinal extent of at least one inner layer, as required in claim 20, and glycerin and at least one additional malodor counteractant material that are incorporated within a multi-layered fibrous absorbent article between the inner and outer layer, as required in claim 26.

Applicants respectfully submit that the rejection of claims 3, 6, 7, 20-23, 26, and 27 under 35 U.S.C. §103(a) as being unpatentable over Hirschman in view of Bernardin, in further view of Petrus, has been overcome, and respectfully request that it be withdrawn.

In view of the foregoing, Applicants submit that all claims present in this application patentably distinguish over each reference and the cited combination of references. Again, Applicants respectfully request an interview with the Examiner to discuss the arguments presented above, or alternatively, Applicants respectfully request that this application be passed to allowance.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Charles N.J. Ruggiero", written over a horizontal line.

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